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REVIEWED ARE VARIOUS LEGAL DECISIONS IN FEDERAL COURTS FOR TEACHER DESEGREGATION IN SOUTHERN SCHOOLS. THE COURTS HAVE STATED THEIR ORDERS FOR FACULTY DESEGREGATION IN RATHER GENERAL TERMS OR SET A STANDARD OF ONE OR TWO TEACHERS WHOSE RACE IS DIFFERENT FROM THE MAJORITY AT A GIVEN SCHOOL. THIS ARTICLE WAS PUBLISHED IN THE "SOUTHERN EDUCATION REPORT," VOLUME 3, NUMBER 9, MAY 1968. (NH)

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DESEGREGATING FACULTIES

By Jim Leeson

Teacher desegregation has proved one of the knottier issues facing the federal courts in the South. The first court orders specifically requiring teacher desegregation came as late as 1962, in three Florida cases decided by U.S. District Judge Bryan Simpson, and the legal precedents on biracial faculties have continued to lag behind those for students. Several decisions earlier this year in U.S. district courts in Alabama, Mississippi and Louisiana provide innovations to encourage or require more teachers to transfer to schools where their race would be in the minority.

In Alabama, a judge set an "ultimate objective" of a 3-2 ratio of white and Negro teachers in each school, representing the racial proportions of teachers of the school system.

In Mississippi, a court suspended two state laws to lessen the political pressure on elected school officials who might recommend desegregation.

In Louisiana, individual teachers were threatened with contempt citations if they failed to accept desegregation or resign.

The threat of resignations in a time of teacher shortages has been a frequent hindrance to efforts of school officials and federal authorities seeking to increase faculty desegregation. Other problems have been cited in limiting the transfer of teachers for the purpose of desegregation. Some districts let teachers select their school assignments, based on tenure, while others sign individual contract assigning teachers to specific schools. Many districts in the South that are hard-pressed financially fear that teachers pushed from choice assignments will move to districts able to offer higher salaries, or will accept early assignment.

This scene has been repeated in numerous courtrooms during the past few years: The superintendent testifies from the witness stand that he can only ask for teachers to volunteer for biracial faculties, and that any attempt at force would—for reasons noted above—cause him to lose teachers. The result usually

has been that the courts then would state their order for teacher desegregation only in general terms, or set a standard of one or two teachers of the minority race at each school.

One federal judge, confronted with similar testimony in a recent case, is reported to have snapped a reply in these approximate words: "If the teachers are prejudiced, that would be good riddance, wouldn't it?"

In the precedent-setting *Jefferson County* decision by the U.S. Fifth Circuit Court of Appeals last spring, which endorsed the compliance guidelines of the U.S. Department of Health, Education and Welfare, this standard was given for faculties:

". . . Wherever possible, teachers shall be assigned so that more than one teacher of the minority race (white or Negro) shall be on a desegregated faculty. . . . The tenure of teachers in the system shall not be used as an excuse for failure to comply. . . ."

The 3-2 racial ratio for faculties was set by U.S. District Judge Frank M. Johnson in a decision concerning the Montgomery City and County school system in Alabama. Johnson said the school board must accomplish eventual faculty desegregation by hiring and assigning faculty members so that in each school the ratio of white to Negro faculty members is substantially the same as it is throughout the system.

"At present," the judge noted, "the ratio is approximately three to two." For the 1968-69 school year, however, he ordered that every school with fewer than 12 teachers have at least two full-time teachers whose race is different from the race of the majority of the faculty and staff. For schools with more than 12 teachers, he said the race of at least one of every six faculty and staff members shall be different from the majority. The judge put off his 3-2 requirement, reserving that for "future years."

Johnson's Feb. 24 decision caused considerable reaction in the community because of his ruling concerning teachers and other school issues. On March 2, he modified some aspects of his order and emphasized the indefiniteness of his 3-2 ratio. "While this court did state in its order of Feb. 24, 1968, that the 'ultimate objective' in faculty desegregation should be, because of the ratio of white to Negro faculty members in the school system, approximately 3-2, no schedule was set up to accomplish this 'ultimate objective.' The U.S. requested that a definite schedule be outlined for this accomplishment. However, gradualism has been found to work quite successfully in the past in this type case and particularly with the Montgomery County Board of Education, and gradualism is contemplated by this court in accomplishing this 'ultimate objective.'"

Other federal courts in the South have set a minimum figure of two teachers per school. Judge Claude F. Clayton prepared a set of guidelines for two Mississippi districts, saying he would enter an order

that requires "two spaces be reserved for each school which may be filled only by contracts with teachers of the minority race, unless this court otherwise allows. . . ."

Judge Clayton presented his guidelines to the school boards in Bolivar and Benton counties, Miss. Both boards had informed the court they were unable to obtain teachers of the opposite race to comply with faculty desegregation this school year. The judge answered that there had been "too much reliance on the statutory procedure" where principals have the responsibility for faculty employment, and "too little recognition and acceptance" by school boards and superintendents "of their responsibilities with respect to faculty desegregation."

In his letter to the two school boards, Judge Clayton said the problems of faculty desegregation, as posed by current federal law, are systemwide and could "never be solved piecemeal by the actions, singly of school principals." The federal judge made several "minimum" recommendations for action by the school districts' governing authorities and superintendents, including:

1. A single meeting of the complete faculty, white and Negro, for a "sincere and serious 'facing up' to faculty desegregation requirements and a full and realistic exploration of all possible ways in which these requirements may be met."

2. A comprehensive questionnaire to learn the factors that cause reluctance or refusal to teach in schools where pupils predominantly are of the opposite race.

3. A program of individual interviews with each faculty and staff member, conducted by at least one board member or the attorney, and the superintendent, to overcome reluctance or refusal to transfer.

4. A program of public information to obtain "public acceptance of the realities of the situation."

5. A teacher recruitment program at all college levels and at colleges with both races "to convince the placement personnel there that a sincere and serious purpose exists to effect the required desegregation."

Judge Harold Cox told another Mississippi school board to suspend two state laws requiring the county superintendent to recommend teachers and principals for employment, and principals to recommend teachers. The move apparently was made to circumvent the political repercussions that an elected superintendent would encounter for desegregating faculties.

In Louisiana, U.S. District Judge Frederick Heebe told a group of teachers in Bogalusa they could comply with his faculty desegregation order, resign or face possible contempt-of-court action for refusing to follow the new schedule. Fourteen ambulatory and physical education teachers who were white decided to comply with his order and one teacher resigned. Judge Heebe advised the lawyers for the teachers that his original plan for two teachers of the opposite race in each school would have to go into effect next school year.

As an example of how the legal standards for teacher desegregation vary considerably from court to court, another federal judge in Louisiana, District Court Judge E. Gordon West, was reported to have advised Pointe Coupee Parish school officials in the presence of an NAACP attorney that in the judge's opinion it was not necessary to have two teachers of different races in the schools. U.S. District Judge Edwin F. Hunter Jr. ordered the Jefferson Davis Parish, La., school board to desegregate the faculties of at least six of its 18 public schools by Feb. 17, but he denied motions for further faculty desegregation in two other Louisiana parishes. Rapides has desegregated faculties at eight of its 50 schools, and Calcasieu, nine of 72 schools.

U.S. District Judge Ben C. Dawkins Jr. warned two other Louisiana school boards, Caddo and Bossier parishes, to complete faculty and staff desegregation as soon as possible. Judge Dawkins deferred action on extending his order, and gave the defendant boards time to comply by changing teacher contracts or "any other means." He said he would have no part "unless forced" in creating "a revolution."

When U.S. District Judge Richard Putnam ordered desegregation of faculties in St. Landry Parish, La., three white teachers resigned rather than accept transfers to formerly all-Negro schools. Another white teacher in the parish, Jimmie Sylvester, filed suit against the school board to block his transfer, saying it would violate his school contract and teacher tenure.

The U.S. Eighth Circuit Court of Appeals, ruling in January on the El Dorado, Ark., school desegregation case, expressed its views on the definition of "racial balance" of faculty: "It is misleading to think that 'balance' means exact symmetry or equilibrium of the races. Numerical quotas or percentages, although appealing for their simplicity, lack that equitable flexibility which is still needed for a selective distribution of qualified teachers for particular faculty roles. But it misses the constitutional mark to say that this principle of flexibility then justifies a segregated faculty pattern."

The court said the question is: "When is there such faculty distribution as to provide equal opportunities to all students and to all teachers—whether white or Negro?" In answering the question, the court said, "When the predominant race of the students attending a particular school continues to serve as the predicate for the board's assignment of a teacher, then equal opportunity is denied." Or, the court continued, "If a predominantly Negro faculty continues to create a pervasive influence on the students' choice of school, then equal opportunity is denied."

The circuit court also overruled the argument that educational standards would be lowered by the transfer of white teachers to Negro schools or Negro teachers to white schools. "Any teacher qualified to teach white children ought to be competent to teach Negroes and vice versa. We are concerned with standards of equal education for all students—whether they be white or Negro. The argument for providing superior education for either race alone does not attract or persuade us." ○